

will direct the requester to the appropriate source, to obtain the record.

(d) *Initial denial authority (IDA)*. The Deputy Director (DDIR), DNA, has the authority to withhold records requested under the FOIA for one or more of the nine categories (set forth § 291.8) of records exempt from mandatory disclosure.

(e) *Appellate authority*. The Director, DNA.

(f) *Administrative appeal*. A request by a member of the general public, made under the FOIA, asking the appellate authority of a DoD Component (Director, DNA) to reverse an IDA decision to withhold all or part of a requested record or to deny a request for a waiver or reduction of fees.

(g) *Public interest*. Public interest is official information that sheds light on an agency's performance of its statutory duties because it falls within the statutory purpose of the FOIA in informing citizens about what their government is doing. That statutory purpose, however, is not fostered by disclosure of information about private citizens that is accumulated in various governmental files that reveals little or nothing about an agency's or official's own conduct.

(h) *Electronic data*. Electronic data are those records and information which are created, stored, and retrievable by electronic means. This does not include computer software, which is the tool by which to create, store, or retrieve electronic data. Refer to paragraphs (b) (2) and (3) of this section for a discussion of computer software.

#### § 291.4 Policy.

(a) *Compliance with the FOIA*. DNA personnel are expected to comply with the FOIA and this part in both letter and spirit. This strict adherence is necessary to provide uniformity in the implementation of the DNA FOIA Program and to create conditions that will promote public trust. It is DNA policy to fully and completely respond to public requests for information concerning its operations and activities, consistent with national security objectives.

(b) *Openness with the public*. 32 CFR part 286 states that all DoD employees shall conduct DoD activities in an open manner consistent with the need for se-

curity and adherence to other requirements of law and regulation. Records that are not specifically exempt from disclosure under the Act shall, upon request, be made readily accessible to the public in accordance with rules promulgated by competent authority, whether or not the Act is invoked.

(c) *Avoidance of procedural obstacles*. DNA offices shall ensure that procedural matters do not unnecessarily impede a requester from obtaining DNA records promptly. PAO shall provide assistance to requesters to help them understand and comply with procedures established by this Instruction, the 32 CFR part 286 and any supplemental regulations published by DoD.

(d) *Prompt action on requests*. When a member of the public complies with the procedures established for obtaining DNA records, the request shall receive prompt attention; a reply shall be dispatched within 10 working days, unless a delay is authorized. When PAO has a significant number of requests, e.g., 10 or more, the requests shall be processed in order of receipt.

However, this does not preclude PAO from completing action on a request which can be easily answered, regardless of its ranking within the order of receipt. In addition, PAO may expedite action on a request regardless of its ranking within the order of receipt upon a showing of exceptional need or urgency. Exceptional need or urgency is determined at the discretion of the PAO.

(e) *Use of exemptions*. It is DoD/DNA policy to make records publicly available, unless they qualify for exemption under one or more of the nine exemptions. Components may elect to make a discretionary release; however, a discretionary release is generally not appropriate for records exempt under exemptions 1, 3, 4, 6 and 7(C). Exemptions 4, 6 and 7(C) cannot be claimed when the requester is the submitter of the information.

(f) *Public domain*. Nonexempt records released under the authority of this part are considered to be in the public domain. Such records may also be made available through the reading room channel to facilitate public access. Exempt records released pursuant

to this part or other statutory or regulatory authority, however, may be considered to be in the public domain when their release constitutes a waiver of the FOIA exemption. When the release does not constitute such a waiver, such as when disclosure is made to a properly constituted advisory committee or to a Congressional committee, the released records do not lose their exempt status. Also, while authority may exist to disclose records to individuals in their official capacity, the provisions of this part apply if the same individual seeks the records in a private or personal capacity.

(g) *Creating a record.* (1) A record must exist and be in the possession of and in control of the DNA at the time of the search to be considered subject to this part and the FOIA. Mere possession of a record does not presume agency control, and such records, or identifiable portions thereof, would be referred to the originating agency for direct response to the requester. There is no obligation to create or compile a record to satisfy a FOIA request. However, a DNA employee may compile a new record when so doing would result in a more useful response to the requester, or be less burdensome to the agency than providing existing records, and the requester does not object. The cost of creating or compiling such a record may not be charged to the requester unless the fee for creating the record is equal to or less than the fee which would be charged for providing the existing record.

(2) With respect to electronic data, the issue of whether records are actually created or merely extracted from an existing database is not always readily apparent. Consequently, when responding to FOIA requests for electronic data where creation of a record, programming, or particular format are questionable, offices should apply a standard of reasonableness. In other words, if the capability exists to respond to the request, and the effort would be a business as usual approach, then the request should be processed. However, the request need not be processed where the capability to respond does not exist without a significant expenditure of resources, thus not being a normal business as usual approach.

(h) *Description of requested record.* (1) Identification of the record desired is the responsibility of the member of the public who requests a record. The requester must provide a description of the desired record that will enable the Government to locate the record with a reasonable amount of effort. The Act does not authorize "fishing expeditions." When DNA receives a request that does not "reasonably describe" the requested record, PAO shall notify the requester of the defect. The defect should be highlighted in a specificity letter, asking the requester to provide the type of information outlined in paragraph (h)(2) of this section. DNA is not obligated to act on the request until the requester responds to the specificity letter. When practical, PAO shall offer assistance to the requester in identifying the records sought and in reformulating the request to reduce the burden on the Agency in complying with the Act.

(2) The following guidelines are provided to deal with "fishing expedition" requests and are based on the principle of reasonable effort. Descriptive information about a record may be divided into two broad categories.

(i) Category I is file-related and includes information such as type of record (for example, memorandum), title, index citation, subject area, date the record was created, and originator.

(ii) Category II is event-related and includes the circumstances that resulted in the record being created or the date and circumstances surrounding the event the record covers.

(3) Generally, a record is not reasonably described unless the description contains sufficient Category I information to permit the conduct of an organized, nonrandom search based on DNA's filing arrangements and existing retrieval systems, or unless the record contains sufficient Category II information to permit inference of the Category I elements needed to conduct such a search.

(4) The following guidelines deal with requests for personal records. Ordinarily, when personal identifiers are provided only in connection with a request for records concerning the requester, only records retrievable by personal identifiers need be searched.

Search for such records may be conducted under Privacy Act procedures. No record may be denied that is releaseable under the FOIA.

(5) The above guidelines notwithstanding, the decision of an office concerning reasonableness of description must be based on knowledge of its files. If the description enables office personnel to locate the record with reasonable effort, the description is adequate.

(i) *Reasons for not releasing a record.*

(1) The request is transferred to another DoD component, or to another Federal agency.

(2) The request is withdrawn by the requester.

(3) The information requested is not a record within the meaning of the FOIA and 32 CFR part 286.

(4) A record has not been described with sufficient particularity to enable DNA to locate it by conducting a reasonable search.

(5) The requester has failed reasonably to comply with procedural requirements, including payment of fees, imposed by 32 CFR part 286 or this part.

(6) The DNA determines, through knowledge of its files and reasonable search efforts, that it neither controls nor otherwise possesses the requested record.

(7) The record is subject to one or more of the nine exemptions set forth in § 291.8, and a significant and legitimate government purpose is served by withholding.

#### § 291.5 Responsibilities.

(a) The Director, DNA, as appellate authority, is responsible for reviewing and making the final decision on FOIA appeals.

(b) The DDIR, as IDA, is responsible for reviewing all initial denials to FOIA requests and has sole responsibility for withholding that information.

(c) The DNA FOIA Officer, who is also the Public Affairs Officer, manages and implements the DNA FOIA program. In this regard, the Public Affairs Officer serves as the FOIA point-of-contact and liaison between DNA and the Office of the Assistant Secretary of Defense (Public Affairs) (OASD(PA)), Directorate for Freedom of Information and Security Review

(DFOI/SR). The Public Affairs Officer is responsible for:

(1) Advising OASD(PA), DFOI/SR, of any DNA denial of a request for records or appeals that may affect another DoD component.

(2) Ensuring publication of this part in the FEDERAL REGISTER.

(3) Ensuring that the Command Services Directorate publishes in the FEDERAL REGISTER a notice of where, how and by what authority DNA performs its functions.

(4) Ensuring that the Command Services Directorate, publishes an index of DNA instructions in the FEDERAL REGISTER.

(5) Coordinating all FOIA actions, except routine, interim replies indicating initial receipt of a FOIA request through the appropriate DNA offices and the DNA General Counsel (GC).

(6) Forwarding all fees collected under the FOIA to the HQ, DNA, Finance and Accounting Officer for further processing.

(7) Coordinating action on FOIA requests that involve other government organizations (e.g., when DNA is not the original classifier for a classified document) with those organizations.

(8) Ensuring FOIA briefings are presented annually for DNA personnel.

(9) Submitting an annual report to OASD(PA), DFOI/SR, in accordance with the requirements of DoD Directive 5400.11.<sup>1</sup>

(d) The Commander, FCDNA, is responsible for determining, based on current directives and instruction, what information in FCDNA custody may be released to FOIA requesters. (This responsibility may be delegated.) The Commander, FCDNA, is responsible for designating a representative to process FOIA requests. The Commander has the authority to release documents in response to the FOIA. When FCDNA releases information under the FOIA, it will forward a copy of the request, the response and the appropriate cost sheet to HQ, DNA, ATTN: PAO (FOIA). FCDNA will not deny requests for information under the FOIA; instead, it will forward to

<sup>1</sup>Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.